Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

# APPENDIX

# In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-204

CASPAR WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE, PETITIONER

*v.*

GEORGE H. ELDRIDGE

*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT*

**PETITION FOR WRIT OF CERTIORARI FILED AUGUST 29, 1974**
**CERTIORARI GRANTED JANUARY 13, 1975**

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No. 74-204

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*v.*

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567-895—75——1

## Relevant Docket Entries

1972

August 3 Complaint filed at 1:30 p.m. this day. Summons issued and mailed to U.S. Marshal in Roanoke for service on defendant, Attorney General and U.S. Attorney.

August 14 USM–285 filed with U.S. Marshal's return of service on August 9, 1972, endorsed thereon.

November 27 Filed Motion to Dismiss, Affidavit of Bernard Popick, and Defendent's Brief in Support of Motion to Dismiss and/or Motion for Summary Judgment.

February 9, 1973 Filed Notice and Motion by Plaintiff's attorney this day.

February 13, 1973 Filed Order dated February 13, 1973 that the said Social Security disability benefit payments be forthwith reinstated as of the date said benefits were terminated, and shall continue until the final determination by this Court of this cause on its merits; and that the said payments shall be made to the petitioner and that said petitioner shall not be held liable for the refund of any portion of same, should the eventual determination of this claim be adverse to him. *CIV. OB. No. 17, p. 368.* Certified copies hereof delivered to Donald E. Earles, Esq. and Birg E. Sergent, Esq. Mr. Sergent will distribute copies to the Social Security Administration.

March 20, 1973 Filed Defendant's Supplemental Motion to Dismiss or, in the Alternative, for Summary Judgment; Affidavit of Bernard Popick; and Supplemental Brief in Support of Defendant's Motion to Dismiss.

April 9, 1973 Filed Opinion and Order dated April 6, 1973 that the Secretary's motion to dismiss is denied and the case is remanded to the Secretary for the payment of disability benefits and for further proceedings not inconsistent with this opinion. *CIV. O.B. No. 18, p. 41.* Certified copies hereof mailed to Carl E. McAfee, Esq. and Birg E. Sergent, Asst. U.S. Attorney.

May 30, 1973 Notice of Appeal filed this day. Copies hereof mailed to Birg E. Sergent, Carl E. McAfee, Esq. and William Kenneth Slate, Clerk, U.S. Court of Appeals.

July 13, 1973, record on appeal in one volume filed and appeal docketed.

September 14, 1973, appellee's motion to dismiss appeal filed.

September 20, 1973, appellant's opposition to appellee's motion to dismiss filed.

September 25, 1973, appellee's response to appellant's opposition of appellee's motion to dismiss, filed.





September 26, 1973, twenty-five (25) copies of the appellant's brief filed.

October 15, 1973, twenty-five (25) copies of the appellee's brief filed.

October 29, 1973, motion for leave to file in forma pauperis the brief of Caroline Williams as amicus curiae filed.

November 5, 1973, brief of amicus curiae filed, four copies.

November 7, 1973, order denying motion to dismiss filed.

November 14, 1973, appellant's motion for leave to file supplemental brief in reply to brief of amicus curiae, Caroline Williams, filed. Motion granted.

November 14, 1973, appellant's supplemental brief in reply to brief of amicus curiae, Carolyn Williams, filed, 25 copies.

February 2, 1974, stipulation by counsel to argue cause before a two-judge panel filed.

ARGUMENT OF CAUSE, February 7, 1974 (February Session, 1974). Cause came on to be heard before Bryan, Senior Circuit Judge, and Butzner, Circuit Judge, and was argued by counsel and submitted.

April 1, 1974, judgment of the district court affirmed. Judgment filed.

In the United States District Court for the Western District of Virginia, Abingdon Division

*Complaint*

Civil Action No. 72–C–167–A—Filed, Aug. 3, 1972

I.

That the said Elliot Richardson is the Secretary of Health, Education and Welfare, having been duly appointed by the President of the United States and as Secretary of Health, Education and Welfare for the United States is in charge of the disbursement of Disability Insurance Benefits applicable under the Social Security Act, as amended.

II.

That your undersigned plaintiff, George H. Eldridge, was on June 3, 1968, awarded Disability Insurance Benefits under Section 216(i) and 223 respectively under the Social Security Act, as amended, having been awarded the aforementioned benefits as a result of a hearing before Louis G. LaVecchia, Hearing Examiner, Knoxville, Tennessee, and was awarded Disability Insurance Benefits on the 3rd day of June, 1968. A copy of the Hearing Examiner's Decision is attached hereto and made a part of your undersigned's complaint.

III.

That your undersigned further alleges that on July 1, 1972 the Department of Health, Education and Welfare, Social Security Administration, stopped and your undersigned plaintiff received notice of stopped payments sometime after July 1, 1972, and a copy of the said notice is attached hereto and made a part of this Complaint.

IV.

Your undersigned plaintiff further alleges that the said Department of Health, Education and Welfare, Social Security Administration, had no authority to stop benefit payments to your undersigned plaintiff, his wife and children because the aforementioned payments had been previously fixed by the Social Security Administration and that your undersigned plaintiff had borne the burden of proof in establishing his disability commencing on November 1, 1967, which award the Social Security Administration did not appeal or contest.

V.

Your undersigned plaintiff further alleges that the Secretary of the Social Security Administration has and presently has sufficient funds on which to continue the payment unto your undersigned plaintiff pending a reexamination of the physical condition of your undersigned plaintiff.

VI.

Your undersigned plaintiff further alleges that in July, 1972 your undersigned plaintiff, through his attorney, requested medical reports and information relied upon by the Social Security Administration for the stopping of disability payments; however, your undersigned plaintiff alleges as of this date there have been no medical reports provided your undersigned.

VII.

Your undersigned plaintiff further alleges that the Secretary of Health, Education and Welfare, has no authority to stop the payments unto your undersigned plaintiff without first affording your undersigned plaintiff an opportunity to be heard and your plaintiff further alleges that undue financial hardships have been created as a result of the stopping of payments in July of 1972 and that these financial hardships have continued and that your undersigned plaintiff has several infant children,



all of whom are in school and that the wife of your undersigned plaintiff is physically incapable and is presently unable to seek employment.

WHEREFORE, your undersigned plaintiff prays that the said respondent, Elliot Richardson, Secretary of Health, Education and Welfare, be commanded to immediately transmit unto your undersigned plaintiff, his wife and infant children the disability benefits checks for the month of August, 1972 and all subsequent months thereafter until such time as your undersigned plaintiff is afforded a hearing under the alleged change of condition claimed by the Department of Health, Education and Welfare and your plaintiff shall be granted such other relief.

GEORGE H. ELDRIDGE,

*By Counsel.*

CLINE, MCAFEE, ADKINS & GILLENWATER
Attorneys at Law,
Professional Arts Building,
Norton, Virginia,
By Carl E. McAfee,
*Counsel for Plaintiff.*

In the United States District Court for the Western District of Virginia At Abingdon

*Motion to Dismiss*

Civil Action No. 72-C-167-A—Filed, Nov. 17, 1972

The defendant, Secretary of Health, Education and Welfare, by counsel, moves that this case be dismissed.

An Affidavit of Bernard Popick, Director, Bureau of Disability Insurance; and a brief in support of the government's motion to dismiss is filed herewith this motion and made a part hereof.

The case should be dismissed since the claimant's benefits were terminated pursuant to lawful regulations of the Secretary of Health, Education and Welfare, which regulations do

not violate due process. The claimant has not exhausted his administrative remedies and has an adequate remedy through the administrative process.

Respectfully submitted,

ELLIOTT L. RICHARDSON,
*Secretary of Health,*
*Education and Welfare,*
By BIRG E. SERGENT,
*Assistant United States*
*Attorney.*

*Of Counsel:*
PAUL MERLIN,
*Chief of Litigation,*
HENRY EIGLES,
*Attorney,*
*Social Security Division,*
*Office of General Counsel,*
*Dept. of Health, Education and Welfare.*

In the United States District Court for the Western District of Virginia

Civil Action No. 72-C-167A—Filed Nov. 17, 1972

*Affidavit of Bernard Popick*

BALTIMORE COUNTY }
*State of Maryland* } *ss*:

I, Bernard Popick, being duly sworn, depose and say as follows:

(1) I am the Director of the Bureau of Disability Insurance of the Social Security Administration, the Bureau of the Administration responsible for administering the Disability Insurance Program.

*Part I*

(2) The Disability Insurance State Manual (the operating manual for State Agencies [1] in their administration of the dis-

[1] By agreement between a State and the Secretary of Health, Education, and Welfare pursuant to Section 221 of the Social Security Act, 42 U.S.C. 421, the State vocational rehabilitation agency assists the Secretary in making disability determinations for Title II purposes.



ability program of the Social Security Administration) contains the following policies and procedures applicable to this case with regard to adjudication of cessation (due to medical recovery) of entitlement to a period of disability and disability insurance benefits which had been previously established under sections 216(i) and 223 of the Social Security Act, 42 U.S.C. 416(i) and 423. Such policies and procedures became effective in accordance with revisions issued February 25, 1972.

353.1 General

A determination that disability has ceased will be made where the medical and vocational evidence establishes a capacity for substantial gainful activity, whether or not the beneficiary returns to work.

Issues of medical recovery generally arise in cases which have been scheduled for medical reexamination in accordance with § 347ff. When the reexamination date is reached, a continuing disability investigation will usually be initiated. The following sections govern the development and adjudication of continuing disability cases involving issues of medical recovery.

* * * * *

353.3 Possible Medical Recovery—No Return to Work

A. *General.*—Cases involving matured medical reexamination diaries and other issues of possible recovery, such as, report of release from a hospital, report of improvement, etc., will be sent directly to State agencies * * *.

B. *State Agency Action.*—The SA will review the file in accordance with the following instructions and contact the beneficiary and appropriate medical sources to obtain the evidence that is necessary to determine if disability is continuing or has ceased. * * *.

1. *Initial State Agency Contact with Beneficiary*—The SA will contact the beneficiary to inform him that it has been requested by SSA to determine whether he continues to be unable to engage in SGA by reason of his impairment and to obtain information concerning: (1) sources of medical treatment, and (2) his participation (including any work) in a State VR program, if any,

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and (3) his opinion as to whether his condition has improved so that he is able to return to work. This initial contact may be made by mail or telephone.

a. *Contact is by Mail*—Form SSA–454(a) (Social Security Disability Benefit Report) * * * should be used where the contact is made by mail. Complete the form by entering the SA name and address, the date, the beneficiary's social security number, name, and address, and the SA's director's name (or his designee). A preaddressed, postage paid envelope should be included. If a reply is not received, an appropriate followup (by mail or phone) should be made as soon as possible but not later than *two* weeks after the initial mailing. If the form is returned and the response is adequate follow § 353.4. * * *.

* * * * *

353.4 Development of Medical Evidence

A. *Development of Current Evidence.*—

1. *Evidence of Record.*—* * * The responsibility for medical development in continuing disability is placed primarily upon the State agencies. If the beneficiary has a current treatment source, that source should always be requested to furnish evidence of record describing the beneficiary's current condition. Even though it may be necessary to request a CE to resolve the question of continuing disability, the presence in file of reports from the beneficiary's medical sources will better insure that no pertinent evidence has been overlooked and thus insure the soundest possible basis for making determinations.

2. *Consultative Examinations.*—When evidence of record concerning the beneficiary's conditions is not available, is not based on a recent examination and for this reason is not convincing about the beneficiary's current condition, or is not sufficiently detailed in terms of signs, symptoms, and laboratory findings to enable a sound independent medical judgment to be made, a consultative examination should be purchased. * * *.

* * * * *



353.5 Evaluation of Medical Evidence

A. *General.*—* * * As in the case of establishing entitlement to benefits initially, the relevant medical evidence for determining continuing disability must be sufficiently detailed as to signs, symptoms, and laboratory findings to enable a sound judgment to be made by an independent reviewer of the record. Detail is especially needed when certain evidence indicates cessation but the beneficiary says that he is unable to return to work because of his impairment, or that his doctor has placed restrictions on how much or what kind of work he may do.

B. *Evaluation Guides for Determining Whether Disability Continues.*—The standards and the evaluation guidelines that apply in determining initial entitlement to benefits also apply for determining whether disability continues. * * *.

* * * * *

353.6 *Subsequent Contact with Beneficiary Prior to Effectuation of Determination of Cessation on Account of Medical Improvement*

A. *Evidence Conflicts with Beneficiary's Allegations.*—Where the medical evidence conflicts in any way with the beneficiary's assessment about the severity of his impairment, or about the date of cessation of such impairment, the beneficiary should be again contacted before a determination of cessation is made. * * * A conflict arises when the beneficiary has informed the SA that his condition has not improved (Item 1(a) of the SSA–454 (a) is answered "No") but the medical and other CD evidence justifies a cessation of disability (see § 353.4B). *The beneficiary should be informed* by mail or telephone *of the proposed adverse action, given a brief summary of the evidence on which it is based and a reasonable opportunity* (i.e., at least 10 working days) *to respond in writing;* if he wishes to obtain and submit additional evidence which may be material in support of his claim, he may be granted an additional time (i.e., 20–30 days) to present such evidence. When a telephone call is made, document file with a report of contact.

*The objective of the foregoing is to provide a beneficiary who feels he is still disabled with opportunity to present evidence to rebut that already in file showing he is no longer disabled.* * * * (Emphasis supplied.)

* * * [The] letter [shall] include * * * all of the following basic points.

Tell beneficiary that we are assisting the SSA in reviewing his case to determine whether he is still unable by reason of his medical impairment from engaging in SGA.

Notify him that based on evidence now in file it appears that a determination would have to be made that he has regained ability to engage in SGA (month/year).

Give in lay terms a brief summary of the evidence and explain why it appears that he has regained ability to engage in SGA.

Explain that we are writing at this time to give him an opportunity if he feels he is still unable to work by reason of his impairment to present any additional evidence he wants us to consider.

Tell him that unless we hear from him within 10 days the State agency will forward his records on to the Social Security Administration where formal determination will be made. Point out that it is important, therefore, that he let us know within 10 days if he wants to submit a statement or evidence (even though he may need more time to submit it).

Explain that when formal determination is made he will be notified by SSA in writing what the determination is. Also that if it is determined he has regained ability to engage in SGA and therefore that his disability has ceased, he will be eligible to receive benefits for the month in which disability ceased and for each of the two months following that month.

B. *Model Letter*

Earlier, we told you we were assisting the Social Security Administration in determining whether you remain eligible to receive monthly benefits on account of disability. To be eligible for such benefits you must be unable to engage in any substantial gainful activity by reason of your impairment.



On behalf of the Social Security Administration, this is to notify you that based on evidence now in file it appears that a determination would have to be made that you regained ability to engage in substantial gainful activity in—(month/year). (Give in lay terms a brief summary of the evidence and explain why it appears the beneficiary is no longer under a disability. (See § 353.7 for examples.))

We are writing at this time to give you the opportunity, if you feel that you are still unable to work by reason of your impairment, to present any additional statement or evidence you want to be considered before a determination is made. If you want to submit such a statement or evidence, please send it to us within the next 10 days using the enclosed envelope which requires no postage.

If you do not write us within 10 days, we will forward your records on to the Social Security Administration where formal determination will be made as to your continuing entitlement to benefits. *It is important, therefore, that you let us know within 10 days if you want to submit a statement or evidence even though you may need more time to submit it.*

When a formal determination is made, you will be notified in writing by the Social Security Administration what the determination is. If it is determined that you have regained ability to engage in substantial gainful activity and therefore that your disability has ceased, you will be eligible to receive benefits for the month in which disability ceased and for each of the two months following that month. (Emphasis original.)

(3) The Claims Manual of the Social Security Administration (the operating manual for administrative Social Security District Office personnel in the administration of Title II of the Social Security Act) contains provisions which complement the above provisions of the Disability Insurane State Manual. In pertinent part this provides as follows:

6705.1 Issues of Medical Recovery Including Medical Reexamination Diary Procedures

(a) General

* * * * *

Medical recovery issues, including matured medical examination diary cases, are sent by BDI directly to State agencies (SA) for development and adjudication. The SA contacts the beneficiary to determine his current treatment sources and his opinion as to his medical condition and its effect on his ability to work. When the contact is by mail, the beneficiary is asked to complete Form SSA–454(a) (Social Security Disability Beneficiary Report). * * *.

When the medical evidence conflicts *in any way* with the beneficiary's assessment about the severity of his impairment, or about the date of cessation of such impairment, the SA again contacts the beneficiary before requesting suspension or preparing a determination of cessation. It informs him of the proposed suspension or cessation, the reasons therefor, and his right to rebut the proposed action. After the beneficiary has had the opportunity to submit rebuttal evidence and/or all conflicts are resolved, a determination is prepared and the file is forwarded to BDI. There are two instances in which the DO will become involved: (1) when the SA requires DO assistance (subsection (c) below), and (2) when the beneficiary feels he needs help and calls or visits the DO (see subsection (b) below).

(b) Beneficiary Requests DO Assistance

(1) SA CONTACT IS BY MAIL

Form SSA–454(a) contains the statement—"If you have any questions, or need help in filling out the questionnaire, please telephone or visit any social security office." Hence, when the beneficiary contacts the DO for assistance, the DO should provide whatever assistance is needed to complete this form. If a beneficiary comes to the DO without this form, the DO should utilize Form SSA–454 (Reports of Continuing Disability Interview (see § 6749)) and, if needed, Form SSA–821 (Work Activity Report) (see § 6748). Upon completion forward all material to the SA. * * *.

* * * * *

(c) Referral of Cases by the State Agency

When the beneficiary does not respond to the State agency inquiry, or if his responses are inadequate or illegible, and in other instances where additional information is needed, the State agency may request assistance from the district office. These requests may include cases in which development on the Form SSA–401 (Medical History and Disability Report) was curtailed when the initial application was filed, and the State agency is unable to obtain the needed documentation, or when the completed questionnaire reveals that the beneficiary has worked and this factor needs additional documentation. * * *.



*Part II*

(4) In connection with my official duties I have custody of the claims folder of the plaintiff in this action. My examination of the folder reveals the following:

(a) With respect to an application filed on March 10, 1967 for a claim of disability filed under sections 216(i) and 223 of the Social Security Act, 42 U.S.C. 216(i) and 423, a hearing examiner of the Social Security Administration found plaintiff disabled under the provisions of Title II of the Social Security Act and an award notice of disability insurance benefits was sent to the plaintiff on June 21, 1968. With this notice plaintiff was advised that his claim would be reexamined in June 1969 because of possible medical improvement and also that if such review showed he was no longer disabled his benefits would be terminated.

(b) Following medical review of plaintiff's disability entitlement, a determination issued on February 18, 1970 that plaintiff's disability ceased as of January 1970 and benefits were accordingly, suspended. Plaintiff, by counsel, sought to avail himself of further administrative remedies by requesting reconsideration on April 11, 1970 and April 23, 1970. Plaintiff also filed in this court Civil Action No. 70–C–52–A on August 27, 1970 seeking an administrative hearing prior to suspension of benefits. An order of the court issued on June 26, 1970 for payments to be continued during the pendency of plaintiff's claim. Following a reconsideration determination a hearing was held on March 17, 1971 and the hearing examiner issued a decision on March 24, 1971 finding that plaintiff's disability had not ceased prior to that date. The hearing examiner's decision was effectuated on April 19, 1971 and the plaintiff was notified of such effectuation on April 30, 1971. By order dated May 6, 1971 this court dismissed Civil Action No. 70–C–52–A on grounds of mootness.

(c) Plaintiff's case was diaried for review the following year for possible medical improvement. On March 20, 1972 the Virginia State Agency sent a letter questionnaire form (SSA–454 (a)) to plaintiff containing the following:

> When your disability payments began, you were notified by the Social Security Administration that your condition might improve and your claim was scheduled for a future review. The Social Security Administration has requested us to help decide whether your condition still prevents you from working.
>
> To help us decide whether you are still entitled to disability benefits, please answer the questions on the next three pages, sign your name at the bottom, and return the form *within ten days* using the enclosed envelope which requires no postage.
>
> If you have questions or need help in filling out the questionnaire, please telephone or visit any social security office. You can find the address in the telephone directory under "Social Security Administration", or ask at your local post office. If you visit the social security office, please bring this letter with you.

The plaintiff completed the questionnaire portion of the form on March 29, 1972 and returned it to the State Agency indicating that he had not improved and listing thereon the medical sources where he had recently received treatment. A medical report was received from plaintiff's treating physician on April 24, 1972 and a psychiatric consultant submitted a report on May 12, 1972 of his examination of the plaintiff. On May 16, 1972 plaintiff was contacted and advised by the State Agency as follows:

> We previously informed you that we were asked by the Social Security Administration to help determine whether your impairment still prevents you from working. Although you indicate on the report you recently completed for us that you do not feel your condition has improved so that you are able to return to work, the other information and evidence in your case shows that you are able to work, and have been since May, 1972.
>
> You were initially found to be disabled due to chronic anxiety and back strain. In addition you have been found to have diabetes. Medical evidence shows no significant motion limitation of your back which would



> impose severe functional restrictions. Diabetes is under control and no complications have been noted, secondary to this. Although you remain somewhat anxious, there is no indications of continued emotional problems of sufficient severity to preclude all work for which you are qualified.
>
> Therefore, disability benefits being paid on your social security number may be stopped unless additional evidence is submitted which shows that you are still unable to work because of your impairment.
>
> *If you have additional information you want us to consider, please let us know immediately, using the enclosed envelope; a reasonable additional amount of time will be granted where necessary for you to obtain and submit additional evidence.* If we do not hear from you within ten days, we will forward your records to the Social Security Administration and when a formal decision is made you will be notified.
>
> Under the Social Security Law, benefits may be paid for a three-month period of adjustment. This period includes the month in which you have a regained ability to work and two additional months. (Emphasis supplied.)

On May 25, 1972, plaintiff sent a letter to the State Agency advising that it already had enough evidence of his disabling impairments and to proceed with the decision. Plaintiff stated the following:

> In regards to your letter of May 16, 1972 asking for more evidence to prove my disability, I think you should already have enough evidence in my files to prove the disability already. Besides if I was able to work I would work because if I was able to work I could make more money than Social Security paid me. Another thing if you will check my reports a little closer I think you will find that I have arthritis of the spine rather than a strained back as you stated in your letter. The people at the Disability Section in Richmond have never made a yes decision in my case, I have always had to have a hearing in order to get the decision made properly. Even at the last hearing that was held in my case I had to employ an attorney, and the Examiner made his decision wholly in my favor and stated in his decision for

my checks to continue without interecption [sic]. So go ahead and make your own decision in the case, I know I'm not able to work, if I ever get able to work again I will, I will get by someway without the Social Security even though I paid into it while I was able to work.

On June 12, 1972, in accordance with section 223(a)(1)(D) of the Social Security Act, 42 U.S.C. 423(a)(1)(D), the Bureau of Disability Insurance of the Social Security Administration approved the determination of the State Agency finding plaintiff's disability ceased as of May 1972 and that benefits, accordingly, terminate after July 1972. The plaintiff was notified of this initial determination on July 7, 1972 and advised of his right to request reconsideration within 6 months of that date.

(5) On August 3, 1972, plaintiff instituted the present court action in which he asserts at paragraph VI of his complaint that through his attorney he had requested the medical evidence on which the determination was based but had not received such information. An investigation by the Bureau of Disability Insurance of pertinent offices of the Social Security Administration disclosed no record of a request by plaintiff or his attorney to review medical evidence in this case. The opportunity to review pertinent medical evidence in this case will be made available to plaintiff or his attorney representative upon a request therefor filed with the Social Security Administration. This may also be made during the course of administrative proceedings at the reconsideration stage upon plaintiff filing a request for such proceedings (Section 404.909 et seq. of Social Security Regulations No. 4, 20 C.F.R. 404.909 et seq.).

Bernard Popick,
BERNARD POPICK,
*Director, Bureau of Disability Insurance.*

In The United States District Court for The Western District of Virginia At Abingdon

Civil Action No. 72–C–167–A—Filed Feb. 9, 1973

*Motion*

George H. Eldridge, by Donald E. Earls, his attorney, moves the Court for an Order enjoining the Secretary of Health, Education & Welfare, his agents, servants, employees, and attorneys, from continuing to withhold social security benefits, until the determination of this action is completed.



This application is made on the grounds that the said George H. Eldridge will suffer immediate and irreparable harm and injury unless the Secretary of Health, Education & Welfare is so restrained, and that George H. Eldridge has no adequate remedy at law, all of which more clearly appears from the record in this case which is of record in the United States District Court for the Western District of Virginia at Abingdon, Virginia.

Dated this 8th day of February, 1973.

GEORGE H. ELDRIDGE,
*By Counsel.*

CLINE, MCAFEE, ADKINS & GILLENWATER,
Attorneys at Law,
Professional Arts Building,
Norton, Virginia,
By: ——— ———,
*Counsel for Claimant.*

In The United States District Court for The Western District of Virginia, At Abingdon

Civil Action No. 72–C–167–A—Filed Feb. 13, 1973

*Order*

This day came the Plaintiff, George H. Eldridge, by counsel, and moved the Court for an Order requiring that Social Security benefits be paid unto the said Plaintiff until such time as a final determination can be made in this case by this Court.

It appearing to the Court that by letter dated February 6, 1973, that the Government has requested additional time in which to file their briefs in this case and it appearing to the Court that irreparable harm will occur to the Plaintiff should the request of the Plaintiff not be granted, it is therefore Ordered that the said Social Security disability benefit payments be forthwith reinstated as of the date said benefits were terminated, and shall continue until the final determination by this Court of this cause on its merits.

It is further ORDERED that the said payments shall be made to the petitioner and that said petitioner shall not be held liable for the refund of any portion of same, should the eventual determination of this claim be adverse to him.

Enter this 13th day of February, 1973.

JAMES C. TURK,
*U.S. District Judge.*

In the United States District Court for the Western District of Virginia

Civil Action No. 72–C–167–A—Filed Mar. 20, 1973

*Defendant's Supplemental Motion to Dismiss or, in the Alternative, for Summary Judgment*

The defendant, Secretary of Health, Education and Welfare, by his undersigned attorneys, hereby supplements the Motion to Dismiss or, in the Alternative, for Summary Judgment, filed heretofore, by filing the attached Affidavit of Bernard Popick, Director of the Bureau of Disability Insurance, Social Security Administration, and the attached Supplemental Brief.

Respectfully submitted,

HARLINGTON WOOD, JR.,
*Assistant Attorney General,*

LEIGH B. HANES, JR.,
*United States Attorney,*

HARLAND F. LEATHERS,
BIRG SERGEANT,
*Assistant United States Attorney,*

JEFFREY S. ROSEN,
*Attorneys, Department of Justice,*
*Attorneys for Defendants.*

*Of Counsel:*
SARAH KEMBLE,
*Acting Chief of Litigation,*

HENRY EIGLES,
*Attorney, Social Security Administration, Office of the General Counsel, Department of Health, Education and Welfare.*



In the United States District Court for the Western District of Virginia

Civil No. 72–C–167A

*Affidavit of Bernard Popick*

BALTIMORE COUNTY
*State of Maryland* } *ss*:

I, Bernard Popick, being duly sworn, depose and say as follows:

(1) I am the Director of the Bureau of Disability Insurance of the Social Security Administration, the Bureau of the Administration responsible for administering the Disability Insurance Program. The following information is furnished to illustrate administrative factors pertinent to the subject civil action.

(2) The number of disabled beneficiaries and dependents receiving disability benefits under Title II of the Act in calendar year 1972 totalled 3,449,000.

(3) During calendar year 1972 there were 39,078 cases in which initial determinations of cessation of disability were rendered.

(4) During calendar year 1972 there were 2,801 hearings held in disability cessation cases.

(5) The average monthly benefit in disability benefit cases to a worker and his dependents in calendar year 1972 is $325.

(6) The average cost of conducting a hearing is estimated to be at least $400. It is estimated that the average cost would increase by at least 30 percent if hearings were held in all cases of cessation of disability, resulting from increased staff and available facilities.

(7) The cost per year of delaying termination of payments to disability beneficiaries and their dependents whose benefits are determined to have ceased is estimated to be:

a. Delay of one month: $325×39,078=$12,700,350
b. Delay of two months: $325×2×39,078=$25,400,700

(8) The present cost of conducting hearings in disability cessation cases is 2,801×$400=$1,120,400.

(9) The cost of conducting hearings in 39,078 cases of cessation of disability is estimated to be 39,078×$400×1.30=$20,320,560.

(10) The total estimated annual cost for holding hearings and delaying termination of disability benefit payments for two months in disability cessation cases is

| |
|---|
| $25,400,700 |
| 20,320,560 |
| $45,721,260 |

(11) The above costs do not include the cost of a restructuring of the adjudicative process as presently exists, which would obtain if a hearing were held prior to an initial determination of cessation disability being rendered.

The initial determination of cessation of disability is rendered by a State Agency (Vocational Rehabilitation) under an agreement with the Social Security Administration (through delegations from the Secretary) in accordance with section 221 of the Social Security Act, 42 U.S.C. 421. State Agencies were so utilized by the Congress because they had well established relationships with the medical profession and would thereby remove the major case load from the Social Security Administration. H.R. Rep. 1698, 83 Cong. 2d Sess., pp. 23–24 (1954). Most States have one office of a State Agency therein [1] which has the medical personnel to provide medical expertise in the initial stages of the adjudicative process. In accordance with section 221 of the Act the Bureau of Disability Insurance in Baltimore, Maryland reviews the State Agency determination for uniformity of application of established standards. H.R. Rept. No. 2936, 84th Cong. 2d Sess., page 26 (1956).

The medical evidentiary development of a disability cessation case and adjudication at the initial and reconsideration determination stages is designed to make maximum use of existing medical expertise and facilities, and also to thus provide the evidentiary development in the case which an administrative law judge (formerly called hearing examiner) would not then have to undertake. It, too, centralizes the processes of such evidentiary development in the singular office of the State Agency and permits of greater uniformity of administration.

[1] Only a few States have multiple offices: Missouri and Florida agencies have five offices each; Louisiana has three; and California has two.



An increased number of hearings for all disability cessation cases which would be conducted on a more local level would require greater use of the Social Security District Office—in excess of 800—which do not now have personnel qualified to make medical judgments; the alternative would be to have the beneficiary travel to the State Agency.

(12) The additional administrative costs that would result by requiring a hearing prior to termination of benefits in a case of cessation of disability would be imposed upon the Disability Trust Fund created by Secton 201(b) of the Social Security Act, 42 U.S.C. 401(b), designed to finance payment of disability insurance benefits.

BERNARD POPICK,
*Director, Bureau of Disability Insurance.*

Subscribed and sworn to before me this 7th day of March 1973.

MARY A. BRENNAN,
*Notary Public.*

My Commission expires June 30, 1974.

Supreme Court of the United States

No. 74–204

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE, PETITIONER

*v.*

GEORGE H. ELDRIDGE

*Order Allowing Certiorari*

Filed January 13, 1975

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

January 13, 1975

Mr. Justice Douglas took no part in the consideration or decision of this petition.

U.S. GOVERNMENT PRINTING OFFICE: 1979